



# THE LEGAL EAGLE

## **THE SURVIVOR BENEFIT PLAN**

*INTRODUCTION: As a service to our legal assistance clients, we have prepared this handout with frequently asked questions on issues involving the Survivor Benefit Plan. It is, of course, very general in nature since no handout can answer your specific questions. We do ask, however, that you read over these questions and answers carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your family law problem. Comments, corrections and suggestions regarding this pamphlet should be sent to the address at the end of the last page.*

### **1. Q. WHAT IS THE SURVIVOR BENEFIT PLAN, AND HOW DOES IT WORK?**

**A.** The Survivor Benefit Plan (SBP) is an annuity paid to the surviving spouse or family member of a deceased servicemember. It's similar to insurance in that it enables retired military personnel to provide monthly income to beneficiaries after the retiree's death. The beneficiary of your SBP can be your spouse, former spouse, dependent children, or any other person with an insurable interest in your life.

### **2. Q. HOW DO I DECIDE HOW MUCH MY BENEFICIARY WILL RECEIVE?**

**A.** To determine how much the beneficiary will receive, you must first designate a "base amount," and this is based on your retired pay. The minimum base amount is \$300 per month, but you can select any greater amount up to the full monthly amount of your retired pay.

The annuity for your spouse or former spouse is 55% of the designated base amount. For example, if the designated base amount is \$2,000, then the monthly annuity payment to the beneficiary will be \$1,100. Your cost for the annuity depends on who your beneficiary is and what base amount you select. Former spouse coverage, for example, costs 6.5% of the selected base amount. The annuity cost is deducted from your gross retired pay.

### **3. Q. DO I HAVE TO SIGN UP? OR DO I HAVE A CHOICE?**

**A.** SBP participation is optional, but if you are on active duty and married, you will not be able to reject full spousal SBP coverage without your spouse's consent. There is also a Guard/Reserve SBP program; once enrolled, a member of the Guard/Reserve must elect the maximum coverage for the spouse unless the spouse consents to a lesser amount. The options are set out in the "20-year letter."

### **4. Q. WHEN DO I HAVE TO DECIDE?**

**A.** There are three points to remember:

- If you are married and on active duty, you must make your SBP election at the time that you retire. If you elect to participate, you cannot cancel the SBP coverage later, except under very limited circumstances. If you decline to participate, this decision is irrevocable absent an Open Enrollment period established by Congress. There hasn't been one, though, since 2006.
- If you are a Guard or Reserve member, you have two chances to select SBP coverage - first when you complete 20 years of service and again when you turn 60. However if you elect to participate at the 20-year point, you cannot unenroll at age 60.
- You are only allowed one adult SBP beneficiary. You can't reserve part for a present or future spouse and part for a former spouse. Multiple beneficiaries are only

permitted if you choose “child coverage,” and there is more than one child, or “spouse and child coverage.”

## 5. Q. IS THIS *REALLY* A GOOD DEAL?

**A.** SBP is generally a good plan, but there are some situations in which it may not be the most economical plan. For example, the minimum SBP plan premium for \$300 per month as the base amount is cheaper than almost every private insurance program. But at larger amounts, SBP coverage may be more expensive than commercial insurance. Also, if you’re going through a divorce and the SBP has not been designated for your soon-to-be-ex, consider “saving” the SBP for a future spouse if your soon-to-be former spouse is likely to remarry before 55, thus losing eligibility for coverage.

Commercial life insurance or a private annuity may also provide better or cheaper protection for a younger surviving spouse. But SBP is a lifetime annuity and it’ll never become “too expensive,” as might be the case with life insurance and rising premiums. For better comparison information on life insurance, check with an insurance agent who is familiar with the costs and benefits of SBP, such as a military retiree or an agent who is in the Reserves or the National Guard. The bottom line here is, “Shop around!”

## SBP CHECKLIST

This attorney checklist will help to explain the SBP and coverage for the non-military spouse.

✓	Action or issue	Comments
	SBP is a unitary benefit, cannot be divided between current spouse and former spouse	
	Election: Servicemember on active duty is automatically covered; at retirement an election must be made, and spouse concurrence is necessary if member chooses no SBP, child only coverage or coverage at base amount less than his/her full retired pay.	
	Election - Guard/Reserve: There is one opportunity to make election at the 20-year mark (after 20 years of creditable Guard/Reserve service). At time of application for retired pay (about a year before member turns 60), he/she is given another opportunity if he/she deferred election at the 20-year mark. Spouse concurrence as above.	
	If representing the nonmilitary spouse, be sure to mandate former spouse coverage with member selecting full retired pay as base amount.	SBP benefit payments equal 55% of the selected base amount, which can be from \$300 up to the full retired pay.
	If representing the member/retiree, make sure that the base amount selected yields an SBP payment not to exceed the amount of retired pay awarded to the former spouse, so that spouse doesn’t profit by retiree’s death.	Selection of a base amount lower than full retired pay means that the death benefit payments from SBP can be about the same as the lifetime spousal payment. This “mirror benefit” approach may be very difficult to calculate before retirement, depending on what the rules of pension division are in the state involved.
	If representing the member/retiree, try to negotiate a reduction of the spouse’s share of the military pension to reflect the additional cost of the SBP premium, which is taken out of the retired pay.	For former spouse coverage, SBP premium is 6.5% of selected base amount, payable out of retired pay, and it is “taken off the top” and deducted before division of disposable retired pay, so the default is that both parties pay in same shares as their respective shares of the retired pay.
	If member/retiree is to submit SBP election to DFAS, make sure this is done within one year of divorce unless the divorce is before retirement, in which case the SM must set up SBP at retirement; enclose divorce decree and SBP application form titled Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage (DD Form 2656-1).	
	If spouse/former spouse applies, be sure to enclose copy of divorce decree, order for SBP coverage and “deemed election request” within one year of order	Use DD Form 2656-10 for deemed election request.

	granting SBP coverage [different deadline from one year after divorce, in some cases].	
	If above deadlines are exceeded, apply to the appropriate Board for the Correction of Military Records for relief. Deadline in most cases is 3 years from discovery of problems. Relief may be available if retiree has not remarried, or if new spouse consents.	
	Send SBP documents to: Defense Finance and Accounting Service, U.S. Military Retirement Pay, P.O. Box 7130, London, KY 40742-7130. (if retired or in a pay status)	It is recommended to send by certified mail, return receipt requested. See DD Form 2656-10 for other addresses to use if not an active duty SM or a retiree already in a pay status.
	SBP is reduced by Dependency and Indemnity Compensation in certain circumstances.	For information, go to <a href="http://www.vba.va.gov/bln/21/Milsvc/Docs/DICDec2002Eng.doc">http://www.vba.va.gov/bln/21/Milsvc/Docs/DICDec2002Eng.doc</a> . Or call toll-free 1-800-827-1000.

**6. Q. I'M GOING THROUGH A DIVORCE FROM MY HUSBAND. IS THERE ANYTHING I SHOULD KNOW ABOUT HIS SBP COVERAGE FOR ME?**

**A.** Yes. Here are the most important points:

- First of all, it's not automatic. You must ask for it, and the two of you must agree on this coverage (or the judge must order it) for SBP to be effective.
- Secondly, it must be included in a court order and sent to DFAS (Defense Finance and Accounting Service) or other applicable retired pay center if you want to be sure that this option will be honored. And the order must be sent to DFAS within one year of the divorce (if by the retiree or servicemember) or within a year of the SBP order (if by the spouse). If divorce happens prior to retirement, the SBP Election needs to be made at retirement, even if it occurs before the 1-year window expires.
- Finally, if retirement is approaching soon, see an SBP counselor, a person from the Retirement Services Office on base, or a legal assistance attorney now, so you can make an informed decision.

**7. Q. WON'T THIS BE TAKEN CARE OF WHEN MY DIVORCE GOES THROUGH?**

**A.** Not necessarily. If your divorce is in an overseas court – Germany, Japan, etc. – then the court cannot do anything about military retirement benefits, including retired pay and Survivor Benefit Plan. No order from an overseas court will be obeyed by DFAS regarding SBP. You'll have to ask a court in the U.S. to make provisions for SBP if you want to be covered.

On the other hand, you may be proceeding with a divorce in an American court. In this case, you should ask your civilian attorney to be sure to include a request for property division in the divorce papers you file with the court. Your papers should specifically ask for division of any military pension rights and coverage under the Survivor Benefit Plan in case your spouse dies. If DFAS is served with the SBP order by the spouse or former spouse within the appropriate deadlines, then it will honor that request, even if the servicemember or retiree refuses to sign an application to that effect.

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